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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA ✓

2010 JUN -1 PM 4:16

JEANNE HICKS, CLERK

BY: K. Coregio

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

CAUSE NO. P1300CR20081339

Assigned to Hon. Thomas Lindberg

**RESPONSE TO MOTION FOR
SPECIAL VISITATION SCHEDULE**

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned, hereby files this Response to the document filed by Defendant Steven Carroll DeMocker ("DeMocker") entitled "Visitation: A Matter of Human Decency and the Constitution" ("Motion"). Defendant's filing is essentially a motion to order the Yavapai County Sheriff ("Sheriff") to provide a special visitation schedule for DeMocker during his upcoming trial. The Court should deny the Motion for the reasons explained in the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

A. The Courts have very limited power to interfere with the Sheriff's operation of the jail.

1 The Court has very limited power in Arizona to interfere with the Sheriff's operation of
2 the jail. In Arizona it is the county sheriff that is empowered to manage the county jail. A.R.S.
3 §11-441(5) ("The sheriff shall: . . . take charge of and keep the county jail and the prisoners
4 therein"); A.R.S. §31-101 ("The common jails in the several counties shall be kept by the sheriffs
5 of the counties in which they are respectively located."). It is also well established that "absent
6 any constitutional violations with regard to prisoners, the judiciary has no authority to interfere
7 with a sheriff's duties to maintain and operate the county jails pursuant to the Arizona
8 Constitution and A.R.S. §§11-441(5) and 31-101, and then only to determine whether specific
9 constitutional violations exist and in doing so to order narrow remedies to correct these
10 violations." Judd v. Bollman, 166 Ariz. 417, 419, 803 P.2d 138, 140 (App. 1991).

12 **B. DeMocker's current classification and privilege status.**

13 DeMocker's Motion alleges constitutionally impermissible treatment by the Sheriff with
14 regard to DeMocker's visitation and communication as a basis for relief. Thus, it is appropriate
15 to review DeMocker's current classification status and his visitation and communication
16 privileges. DeMocker is currently classified in general population. While there have been
17 suspicions that DeMocker has engaged in unauthorized behavior (attempts to become a "dorm
18 boss" and attempts at unmonitored non-privileged communication during visitation), DeMocker
19 has not been disciplined for rule violations during his stay. DeMocker has been moved at least
20 once as a prophylactic measure when it appeared his activities with other inmates with whom he
21 was housed might be creating safety and security issues. However, DeMocker currently enjoys
22 the normal visitation and communication privileges of a general population inmate.

23 Normal visitation times for DeMocker and every other inmate with his classification and
24 housing status are on Fridays from 8 AM to approximately 3:30 PM. As with any other inmate
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1 with his classification, DeMocker may also use the telephone for communication with others
2 including his children and his parents every day from approximately 7 AM to 10 PM. There are
3 no extraordinary restrictions on DeMocker sending mail to or receiving mail from his children or
4 his parents.

5 To reiterate: DeMocker currently enjoys the same visitation and communication
6 privileges as all general population inmates. He is treated no differently from any other inmate
7 with his classification and housing status. Thus, DeMocker's major contention – that he "is being
8 denied all rights to see and communicate directly with anyone who is not a member of Mr.
9 DeMocker's legal team"¹ – is patently false.

10 **C. DeMocker asks for Special Treatment.**

11 What DeMocker asks for is *special* treatment. DeMocker asks the court to order the
12 Sheriff to treat DeMocker differently than any other inmate in the jail based solely on the fact that
13 DeMocker is entering a trial on his criminal charges. DeMocker asks that the Sheriff provide
14 visitation for DeMocker outside of the established visitation schedule on another day, or over the
15 lunch hour, or before or after court – a special privilege none of the other approximately 550
16 inmates is granted. The Sheriff is well within his rights to deny such special treatment to
17 DeMocker, and does so based on legitimate safety and security concerns of the jail.

18 **D. DeMocker has a limited constitutional right to visitation.**

19 As the US Supreme Court noted in Overton v. Bazzetta,

20 The very object of imprisonment is confinement. Many of the liberties and
21 privileges enjoyed by other citizens must be surrendered by the prisoner. An
22 inmate does not retain rights inconsistent with proper incarceration. See Jones v.
23 North Carolina Prisoners' Labor Union, Inc., 433 U.S. 119, 125, 97 S.Ct. 2532, 53
24 L.Ed.2d 629 (1977); Shaw v. Murphy, 532 U.S. 223, 229, 121 S.Ct. 1475, 149
25 L.Ed.2d 420 (2001). And, as our cases have established, freedom of association is
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¹ Defendant's Motion, page 2, lines 2-4.

1 among the rights least compatible with incarceration. See Jones, supra, at 125-
2 126, 97 S.Ct. 2532; Hewitt v. Helms, 459 U.S. 460, 103 S.Ct. 864, 74 L.Ed.2d
3 675 (1983). Some curtailment of that freedom must be expected in the prison
4 context.

5 Overton v. Bazzetta 539 U.S. 126, 131, 123 S.Ct. 2162, 2167 (2003).

6 Thus, there is a diminished right of association (visitation) within the confinement
7 process. This diminished right of association (visitation) applies to a pre-detainee inmate as well
8 as a post-conviction inmate.

9 **E. The Turner Test.**

10 It is true that while significantly diminished, the right of association (visitation) does not
11 vanish entirely. Id. “[W]hen a prison regulation impinges on inmates' constitutional rights, the
12 regulation is valid if it is reasonably related to legitimate penological interests.” Turner v. Safley,
13 482 U.S. 78, 89, 107 S.Ct. 2254, 2261(1987). Because the Sheriff's schedule does limit
14 DeMocker's visitation (in the same way it limits the visitation for all inmates) we must analyze
15 the impact the Sheriff's visitation schedule on DeMocker's diminished association rights in light
16 of Turner.

17 In determining whether the regulation is “reasonably related to legitimate penological
18 interests,” four factors should be considered (“the Turner test”): (1) whether the regulation has a
19 logical connection to the legitimate government interests invoked to justify it; (2) whether
20 alternative means of exercising the right on which the regulation impinges remain open to prison
21 inmates; (3) the impact that accommodation of the asserted right will have on guards, other
22 inmates, and prison resources; and (4) the absence of ready alternatives that accommodate the
23 prisoner's rights at de minimis cost to valid penological interests. Id.

24 **1. The Sheriff's visitation policy is reasonably related to a legitimate penological**
25 **interest.** Here, the Sheriff has developed a uniform schedule for visitation based on inmate
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1 classification and housing. Inmates that are classified together are also housed together.
2 Visitation rights are exercised in each housing unit by moving the inmates exercising visitation
3 from the housing unit to the visitation area at the time visitation is scheduled for that unit. Thus,
4 only two secure areas are involved in the movement of inmates, and minimizing the amount of
5 movement limits the number of officers needed to securely facilitate the movement. This
6 schedule also prevents "classification mixing" - the mixing of different levels of security
7 classification in one confinement area. The need for classification itself is security; classification
8 mixing destroys the security value of the classification system, and must be strenuously avoided.
9

10 There are over 550 inmates in the Yavapai County Jail, and a large number of separate
11 classifications. Some examples: general population (male); general population (female); high
12 security (male); high security (female); medical classification (male); medical classification
13 (female); administrative segregation (male); administrative segregation (female); protective
14 segregation (male); protective segregation (female). In order to accommodate the large number
15 of classification categories, each classification category is scheduled for visitation at particular
16 days and times. The jail staffing schedules are designed to provide adequate and appropriate
17 security for each classification during the scheduled visitation time for that classification. In
18 addition, establishing and maintaining consistency within the visitation schedule gives the
19 inmates and their families the ability to plan their visitation, which in turn leads to less frustration
20 and unrest within the jail. Thus, the Sheriff's visitation schedule has a legitimate penological
21 interest behind it - to safely and securely allow all inmates to have an equal opportunity for
22 visitation.
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25 ***2. DeMocker has visitation opportunities – and alternatives available if he cannot***
26 ***exercise them.*** DeMocker has a scheduled visitation day and time, the same as every other

1 inmate in his classification and housing group – every Friday. If he cannot or chooses not to meet
2 with visitors at that time, DeMocker also has alternative means to communicate with his family.
3 He may use the telephone from 7 AM to 10 PM each day, and indeed for most of his confinement
4 has used the telephone for several hours each day. He may communicate with them by mail. The
5 Overton court (in approving telephone and mail as constitutionally adequate alternatives to
6 personal visitation) noted “alternatives to visitation need not be ideal, however; they need only be
7 available.” Overton 539 at 135, 123 at 2169.
8

9 **3. *Granting DeMocker’s request will have a huge negative impact on jail safety and***
10 ***security.*** Granting DeMocker special treatment creates serious safety and security concerns for
11 the jail. Moving the visitation schedule for DeMocker’s classification group would mean
12 readjusting the schedule for every classification group, which in turn would lead to a complete
13 staffing readjustment. Such a move would throw the visitation arrangements for every jail inmate
14 into chaos, creating frustration and unrest in the jail population. Granting DeMocker special
15 visitation times would involve additional staff and space requirements, increasing the cost of
16 DeMocker’s incarceration. Furthermore, any move that granted DeMocker’s request would also
17 create a very serious safety and security issue for DeMocker himself as well as jail staff and other
18 inmates. Other inmates would view the accommodation for DeMocker as preferential treatment,
19 resulting in resentment and possible violence against DeMocker himself. All other inmates would
20 begin to demand visitation accommodation based on scheduling conflicts or mere inconvenience.
21 “When accommodation of an asserted right will have a significant “ripple effect” on fellow
22 inmates or on prison staff, courts should be particularly deferential to the informed discretion of
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1 corrections officials.”² Turner, 482 U.S. at 90, 107 S.Ct. at 2262 (1987); See also Standing Deer
2 v. Carlson, 831 F.2d 1525, 1529 (9th Cir.1987) (upholding a prison regulation banning the
3 wearing of headgear in the prison dining room against a free exercise challenge by Native
4 Americans in part on the ground that “special arrangements for one group could create an
5 appearance of favoritism that could generate resentment and unrest.”).

6
7 **4. There are no alternatives that provide DeMocker’s request at de minimis cost.** The
8 granting of the special privileges DeMocker requests will create the kind of resentment and unrest
9 noted in Standing Deer, threatening the safety and security of the jail. The price in manpower and
10 liability to deal with such a problem is not de minimis.

11 **F. The Arizona Victims Bill of Rights does not give DeMocker the right to visitation.**

12 The Sheriff sympathizes with Katie and Charlotte DeMocker, and understands this is a
13 most difficult time for them. Their mother has been brutally murdered. But the Victims’ Bill of
14 Rights simply does not apply to the matters raised by DeMocker’s Motion.

15
16 The purpose of the Victims Bill of Rights is to protect the victim’s privacy and to
17 *minimize* the victim’s contact with the defendant. State ex rel. Dean v. City Court, 173 Ariz. 515,
18 844 P.2d 1165 (App. 1992). There is no specifically enumerated right in the Victims’ Bill of
19 Rights for a victim to have face to face visits with a defendant, and this notion is indeed contrary
20 to one of the intended goals of the Victim’s Bill of Rights – to protect the victim from the
21 defendant. Katie and Charlotte DeMocker may of course communicate with DeMocker if they
22 wish, including visitation during regular visitation times. But there is nothing in the Victims’ Bill
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26 ² The “Ripple Effect” would also include significant additional work for the Courts. Granting this Motion means every inmate with an inconvenient visitation schedule has incentive to file a Motion to compel a more accommodating visitation schedule.

1 of Rights that give a victim – and especially the defendant - the right to demand that a court
2 override the safety and security restrictions imposed by the Sheriff on jail visitation.

3 Further, it is not hard to find DeMocker's narcissistic purpose in raising the "Victim's
4 Rights" argument. Note the language of DeMocker's attorneys in their pleading: "We have all
5 watched with increasing horror over the last three weeks as *Mr. DeMocker has been denied* the
6 opportunity to visit with his daughters . . .".³ (Emphasis added). *Not* that the *daughters* have been
7 denied, *but that DeMocker* has been denied.⁴ This language makes it abundantly clear the reason
8 the Motion has been brought is to gain special treatment for DeMocker himself - not to secure the
9 rights of the daughters (who incidentally have independent legal counsel, and don't need
10 DeMocker's attorneys to represent them). Note too that the Motion as a whole asks not just for
11 special visitation privileges to see the daughters, but to everyone that wishes to visit. Simply put,
12 DeMocker is obviously attempting to use his daughters' status as victims of this horrible crime to
13 advance his own desire for special treatment. DeMocker cites no law for this absurd theory,
14 because there is none. The Court should reject this argument for the absurdity it is.

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17 **G. The Sheriff will remind DeMocker of available mental health services.**

18 As the court noted in Overton, the Sheriff has a duty to care for DeMocker's basic needs,
19 including health issues. DeMocker in his Motion intimates that he might be enduring mental
20 health problems. The Sheriff's Office will remind DeMocker of mental health services available
21 in the jail to address any mental health issues that may be affecting DeMocker.

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23 **H. Conclusion.**
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26 ³Defendant's Motion page 6, lines 14-16.

⁴As noted above, the Sheriff hasn't denied visitation at all, but has denied requests for special treatment. It is the Court's schedule that is creating the problem for DeMocker, not the Sheriffs.

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1 The Courts have limited authority to interfere with the Sheriff's operation of the jail, and
2 then only to the extent necessary to correct a constitutional violation. DeMocker currently enjoys
3 the same communication and visitation privileges as every other inmate of his classification and
4 housing status. DeMocker's constitutional rights of association are significantly diminished as a
5 result of his incarceration. There is a legitimate penological interest in maintaining a uniform
6 visitation schedule based on classification and housing. If he is unable to exercise his visitation
7 during scheduled times, alternatives such as phone calls and mail is available to him. Granting
8 DeMocker special visitation privileges that deviate from the uniform visitation schedule will
9 create serious safety and security problems within the jail. There are no de minimis alternatives
10 to the uniform visitation schedule. DeMocker has no right to assert the rights of victims in this
11 case. The Sheriff's Office will remind DeMocker of available mental health services.

12 WHEREFORE, the Sheriff prays the Court deny DeMocker's Motion.

13 RESPECTFULLY SUBMITTED this 1st day of June, 2010.

14 Sheila Polk
15 YAVAPAI COUNTY ATTORNEY

16 By: 
17

18 Jack H. Fields

19 Deputy County Attorney

20 COPY of the foregoing hand delivered / *Mailed*
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